Supreme Court, U.S.
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No. 99-1708

IN THE

Supreme Court of the United States

HILLCREST DEVELOPMENT,
a California Limited Partnership,

Petitioner,

v.

COUNTY OF RIVERSIDE, a Public Entity; R. WAYNE WATTS, Treasurer-Tax Collector of the County of Riverside; N.R.L.L., INC., a California Corporation; SPAN, L.L.C., a Limited Liability Company,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FOURTH DISTRICT, DIVISION TWO

BRIEF IN OPPOSITION FOR RESPONDENTS COUNTY OF RIVERSIDE AND R. WAYNE WATTS, TREASURER-TAX COLLECTOR

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TABLE OF CONTENTS

	Page
Table of Cited Authorities	ii
Statement of the Case	1
A. Petitioner's Contentions	4
B. Decision Of The Court Of Appeal	4
Reasons for Denying the Writ	5
I. The Court's Decision Is Consistent With Decisions Of This Court And The United States Courts Of Appeal	5
II. Adequate Remedy At Law	6
III. Due Process May Be Challenged Under Section 3725	9
IV. The Court's Decision Did Not "Immunize The County From Suit Under Section 1983"	10
V. An Unpublished Decision Cannot Be Used By Parties Or The Court	11
Conclusion	12

TABLE OF CITED AUTHORITIES

Page

Cases:

Burris v. City of Little Rock, 941 F.2d 717 (1991) 7

California v. Grace Brethern Church, 457 U.S. 393, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982) 7

Fair Assessment in Real Estate Assn. v. McNary, 454 U.S. 100, 102 S. Ct. 177, L. Ed. 2d 271 (1981) 5, 6, 9, 10, 11

Mennonite Board of Missions v. Adams, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983) 9

National Private Truck Council, Inc. v. Oklahoma Tax Comm'n, 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995) 5, 6, 9, 10, 11

Rosewell v. LaSalle Nat'l Bank, 450 U.S. 503, 101 S. Ct. 1230, 67 L. Ed. 2d 474 (1981) 7

Saranac Land & Timber Co. v. Roberts, 177 U.S. 318, 20 S. Ct. 642, 44 L. Ed. 786 (1900) 10

Sipe v. Amerada Hess Corp., 689 F.2d 396 (1982) .. 7

Wilson v. Garcia, 471 U.S. 261, 105 S. Ct 1938, 85 L. Ed. 2d 254 (1985) 4, 9

Cited Authorities

Page

Statutes:

28 U.S.C. § 1341 ..... 5, 6

42 U.S.C. § 1983 ..... 4, 5, 6, 8, 10, 11, 12

California Code of Civil Procedure Section 340(3) 8

California Revenue and Taxation Code Section 3725 .....3, 7, 9

California Revenue and Taxation Code Section 3728 7

Rules:

California Rules of Court 977(a) 11

California Rules of Court 977(b)(1) 11

Other Authority:

9 Witkin *California Procedure, Appeal* § 716 (4th ed. 1996) 11

Respondent respectfully requests this Court deny the petition for writ of certiorari filed by Hillcrest Development, a California Limited Partnership.

STATEMENT OF THE CASE

Hillcrest, a California Limited Partnership acquired the real property that is the subject of this action in 1984. During the twelve years that Hillcrest owned the property they paid the state property taxes only once when they sold a portion of the property to a third party. Hillcrest failed to pay the ad valorem taxes for the 1988-89 tax year, and the property was tax-defaulted by operation of law on June 29, 1990. Hillcrest thereafter failed to pay taxes for the 1990-91, 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 tax years.

During the twelve years that Hillcrest was the taxpayer/ assessee of the subject property, Hillcrest recorded two documents with the Riverside County Recorder, each with a different "Mail Tax Statements To" address.

Over the 5 year period after the property was tax-defaulted, the Tax Collector mailed regular tax bills to Hillcrest at the address provided by Hillcrest. The tax bills included a reminder to taxpayers to notify the Assessor of any change of address. Sometime in 1993, Hillcrest moved from the address on the tax roll and failed to provide a change of address to the Assessor.

Notice of the Power To Sell Tax Defaulted Property was recorded with the Riverside County Recorder on August 24, 1995. The Tax Collector mailed the notice of the sale of the subject property to Hillcrest by certified mail to the address on the tax roll and the two additional addresses from the

recorded documents.[1] In addition to the certified mail, the Tax Collector's effort to notify Hillcrest of the tax sale included a Department of Motor Vehicle search, a search of the Tax Collector's computer records and indexes, and a search of the Riverside County and Orange County phone directories. The Tax Collector also purchased Lot Book Reports on all properties subject to sale in order to find addresses of parties of interest, which includes assessee/ owners and lienholders of record, to notify them of the tax sale.

On March 26, 1996 the subject property was sold at public auction to the highest bidder, N.R.L.L. Inc., a California Corporation. The tax deed to the purchaser was recorded on April 24, 1996 with the Riverside County Recorder.

In July of 1996, Hillcrest's General Manager, Paul Salata, was contacted by Nelson-Brown Equities Inc. regarding unclaimed assets of approximately $83,000. Mr. Salata signed a fee agreement with Nelson-Brown Equities, and on October 15, 1996, a letter from Nelson-Brown Equities to Paul Salata disclosed the nature of the unclaimed assets. The assets were identified as excess proceeds being held by the County of Riverside from the sale of Assessors Parcel Numbers 381-320-020-1 and 381-320-023-4, the subject property.

On November 7, 1996 Paul Salata signed the documents authorizing Nelson-Brown Equities to act as Hillcrest's agent

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1. The Tax Collector published all notices as required under the California Revenue and Taxation Code. (Respondent's Brief pages 7-8.)

for the purpose of claiming the excess proceeds from the sale of the subject property. The claim form identified Hillcrest's former property by the Riverside County Assessor parcel numbers. Hillcrest's agent filed a claim for the excess proceeds with the County, and the claim was paid. (Petition Appendix pg. 29 n.4.)

Hillcrest filed their Complaint to set aside the tax sale on October 14, 1997. (Petition Appendix pg.17.)

The California Revenue and Taxation Code sets out a complete statutory scheme for the assessment and collection of property taxes. This scheme incorporates the Federal Constitutional requirement of due process. The taxation scheme has many specific requirements pertaining to notice, and allows for a period of five years in which the taxpayer/ assessee may redeem the property. On top of the five year period is an additional one year period after the tax deed to purchaser has been recorded, in which the taxpayer/assessee can bring an action to have the tax deed set aside and the property returned.

California Revenue and Taxation Code Section 3725 provides the one year statute of limitations from the date of recording the tax deed to the purchaser to bring an action to invalidate the tax sale and have the property returned to the owner. Hillcrest had until April 24, 1997 to file suit to invalidate the tax sale under state law. [2]

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2. On page 6 of the Petition Hillcrest states that as a result of the Court of Appeals decision neither they nor other property owners in Riverside County have a remedy for a due process violation. This statement in not true. The Court never decided the issue of due process because Hillcrest failed to take advantage of their legal remedy, a suit to invalidate the tax sale.

Hillcrest had actual knowledge of the tax sale in October of 1996 (Petition Appendix pg. 5) and failed to take any action to set aside the tax sale under state law.[3]

A. Petitioner's Contentions

A review of the Petition before this Court would lead one to believe that Hillcrest was faced with the following scenario:

Under California law, Hillcrest's real property was sold for taxes out of the blue, with no notice to Hillcrest and no opportunity for Hillcrest to be heard; that the Court of Appeal by their decision totally exempted municipalities from the Civil Rights Act, 42 U.S.C. § 1983, and gave qualified immunity to private parties; that Section 1983 should apply even though the claim is in a state tax case because the taxes have been paid and are not "anticipatory;" that the Court of Appeal said there was an adequate remedy at law, but there is no adequate remedy because a refund is not available under state law; and finally, the County is going to publish the Court of Appeal's unpublished decision.

B. Decision Of The Court Of Appeal

In reality, the Court of Appeal said that under *Wilson v. Garcia*, 471 U.S. 261, 105 S. Ct 1938, 85 L. Ed. 2d 254 (1985) the applicable statue of limitation for a Section 1983 violation is the State's personal injury statute. (Petition Appendix 3, 16.)

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3. The Statement of the Case is derived from the facts set out in Respondent's Brief pages 2-8 and the decision of the Court of Appeal.

The Court of Appeal referred to this Court's decisions in *Fair Assessment in Real Estate Assn. v. McNary*, 454 U.S. 100, 102 S. Ct. 177, L. Ed. 2d 271 (1981) and *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995). In those cases the Court discussed the Tax Injunction Act, 28 U.S.C. § 1341, the broad principles of comity, and the interplay between federal non-interference with States taxation and civil liability under Section 1983.

Applying the law to the case at hand, the Court of Appeal said that in order to challenge State taxation, Hillcrest must seek protection of their federal due process right by State remedies as long as those remedies are adequate. The Court of Appeal found that the State remedy, a timely suit to invalidate the tax sale, was an adequate remedy.

The Court of Appeals finding that the state remedy was adequate did not "exempt" or "immunize" the tax collector or the purchaser at tax sale from Section 1983.

REASONS FOR DENYING THE WRIT

I.

THE COURT'S DECISION IS CONSISTENT WITH DECISIONS OF THIS COURT AND THE UNITED STATES COURTS OF APPEAL

This case concerns two federal statutes, 42 U.S.C. § 1983 and 28 U.S.C. § 1341. Section 1983 provides a cause of action in state or federal courts to address federal constitutional and statutory violations by state officials. Section 1983 provides that the applicable statute of

limitations is found in the State's personal injury statute. Section 1341 prohibits federal courts from enjoining, etc., the collection of a state tax where there is an adequate remedy at law.

In *National Private Truck, supra*, the Court reiterated the strong principle against federal interference with state taxation. The Court reviewed their findings in *Fair Assessment* barring taxpayers from asserting Section 1983 actions against state tax systems in federal courts. *National Private Truck* extends the principles of federalism and non-interference by saying that Section 1983 does not provide a cause of action in state courts when there is an adequate state remedy available.

In *National Private Truck, supra*, at 518, the truckers not only sought a refund under Oklahoma law, but declaratory and injunctive relief under Section 1983. The Court said, "Whether a suit is brought in federal or state court, Congress simply did not authorize the disruption of state tax administration in this case."

The decision by the Court of Appeal is not in conflict with these cases, and in fact relies on the analysis and holdings in both cases.

II.

ADEQUATE REMEDY AT LAW

Hillcrest tries to distinguish this case from *National Private Truck* on the basis that the property taxes have been paid and they are not seeking a refund of the taxes. However, Hillcrest *is* seeking a refund, or the return of the subject

property. The return of the property to Hillcrest is the very remedy that was available under state law. California Revenue and Taxation Code Sections 3725 and 3728. Extending Section 1983 to a state tax case when there is an adequate remedy at law would effectively undermine the collection of property tax in California.

The Court in *California v. Grace Brethern Church*, 457 U.S. 393, 413, 102 S. Ct. 2498, 2510, 73 L. Ed. 2d 93, 109 (1982) said, ". . . we must construe narrowly the 'plain, speedy and efficient' exception to the Tax Injunction Act." State Courts have an obligation to protect civil rights under state laws.

For a remedy to be adequate, a state remedy must provide an opportunity for a "full hearing and judicial determination" to raise constitutional objections. *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 515, 101 S. Ct. 1230, 67 L. Ed. 2d 474 (1981) "A state remedy need not be the best remedy available or equal to that available in federal court." *Sipe v. Amerada Hess Corp.*, 689 F.2d 396, 407 (1982). The fact that the taxpayer did not resort to the state remedy does not make the state remedy insufficient. *Burris v. City of Little Rock*, 941 F.2d 717, 721 (1991).

Hillcrest filed their Complaint To Quiet Title and Cancel Tax Deeds, for Deprivation of Rights Privileges or Immunities Secured by the Constitution and Declaratory Relief on October 14, 1997. (Petition Appendix pg.17.) On page 9 of the Petition, Hillcrest states that they did not seek a refund of the tax in the civil rights action. Hillcrest did seek to set aside the tax sale. If the tax sale is invalidated, the property will once again belong to Hillcrest, in essence a refund of the property.

In California it is well settled that a taxpayer may challenge the Constitutionality of the State taxation system without alleging a violation under Section 1983. The state remedy is not the same as the remedy under the State's personal injury statute of limitations.[4] The State remedy is to pay the property tax and redeem the property prior to a tax sale or to file an action to invalidate the tax sale within one year of the tax deed to the purchaser. The fact that California's statute of limitations to set aside a tax sale is not identical to it's personal injury statute of limitations does not make it insufficient. In California, a tax sale is the culmination of the property being tax defaulted for five years and a one year statute of limitations. Our tax system is not ungenerous.

Allowing Hillcrest to proceed under Section 1983 would eviscerate the state property tax system. Purchasers could not rely on the validity of a tax sale. The sale would be subject to being set aside based on when the taxpayer knew or should have known that his property was sold. The sale would not be finite. Buyers would no longer buy at public auctions, and taxpayers need not make their regular property tax payments because the Tax Collector would not be able to sell their property for delinquent taxes.

The State Legislature has set up time limitations for the collection of property taxes. These time frames allow the taxpayer sufficient time to pay his delinquent taxes and redeem the property, and they provide the government with

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4. California's personal injury statute of limitations is Code of Civil Procedure Section 340(3). This section is also a one year statute of limitations, however, the time to bring an action would run from the time Hillcrest knew or should have known about the tax sale.

sufficient funds for necessary services. To change the State statute of limitations to the appropriate section under *Wilson* for a civil rights violation would allow for uncertainty in the collection of taxes and thwart the State statutory scheme. This is far from a "tangential effect on the taxing activity." (Petition pg. 14.)

The Court of Appeal relied on this Court's decision in *Fair Assessment* and *National Private Truck* to determine that Section 1983 did not provide a remedy "for alleged unconstitutional state taxation" (Petition Appendix pg. 3), "when an adequate legal remedy exists." (Petition Appendix pg. 20-22.)

III.

DUE PROCESS MAY BE CHALLENGED UNDER SECTION 3725

Hillcrest has consistently misstated the Constitutional requirements of due process as set out in *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983). In Appellant's Opening Brief page 17 and the Petition page 9, Hillcrest states and infers that actual notice or receipt of notice of the tax sale is required. *Mennonite*, *supra*, spoke of ". . . notice reasonably calculated to apprise . . . of a pending sale."

The Court of Appeal pointed out that under California law, tax-defaulted property cannot be sold until it has been in default for at least five years. The property owner has the right to redeem the property until it has been sold for back taxes. The Tax Collector must make a reasonable effort to notify parties of interest, and is required to send certified

notice of the tax sale to such parties. A proceeding to invalidate the tax sale and return the property to the owner may be commenced within one year of the execution of the Tax Collector's deed to the purchaser. (Petition Appendix pg. 8, 9.)

Hillcrest had five years to pay the property taxes and redeem the property. Hillcrest had an additional year to file an action to invalidate the tax sale and have the property returned. As indicated in *National Private Truck, supra*, at 516 "the States are afforded great flexibility in satisfying the requirement of due process in the field of taxation." A reasonable statute of limitations can bar claims based on alleged violation of the constitutional right to due process. *Saranac Land & Timber Co. v. Roberts*, 177 U.S. 318, 329-331, 20 S. Ct. 642, 647, 44 L. Ed. 786 (1900).

There has been no expansion of *Fair Assessment,* or *National Private Truck*, by the Court of Appeal's decision. What Hillcrest is really saying is that they should be able to circumvent state law by alleging a civil rights violation in a tax matter.

IV.

THE COURT'S DECISION DID NOT "IMMUNIZE THE COUNTY FROM SUIT UNDER SECTION 1983"

Hillcrest states on pages 6 and 13 of the Petition that the Court of Appeal concluded that municipalities cannot be sued on a civil rights violation under any circumstance because the constitutional violation occurred in connection with the state taxing process. This is not what the Court of Appeal said. They said that Hillcrest could not state a claim under Section 1983 when an adequate state remedy is available. (Petition Appendix 20-22.)

Since there is no viable Section 1983 claim, there can be no immunity or qualified immunity for the County or for the purchaser at tax sale. The State provides an adequate remedy at law of which Hillcrest failed to avail themselves. Their failure to act was barred by a reasonable statute of limitations. Neither the County or N.R.L.L are exempt from Section 1983.

V.

AN UNPUBLISHED DECISION CANNOT BE USED BY PARTIES OR THE COURT

One of the reasons given by Hillcrest for this Court to grant review is that the County may use this decision to "curtail any future proceeding or set up a defense of reasonableness." (Petition pg. 11.) The law as set out by this Court in *Fair Assessment* and *National Private Truck* is sufficient for County's reliance.

Under California Rules of Court 977(a) [Unpublished opinions] "An opinion of a Court of Appeal . . . that is not certified for publication or ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except as provided in subdivision (b)". Subdivision (b)(1) [Exceptions] excepts an opinion that is ". . . relevant under the doctrines of law of the case, res judicata or collateral estoppel."

The exceptions to the Rule cited in 9 Witkin *California Procedure, Appeal* § 716 (4th ed. 1996) do not appear to be relevant to this matter. Hillcrest has no grounds to allege that County will violate the Rule.

CONCLUSION

The Court of Appeal followed and applied the law as set out by this Court, finding that a Section 1983 cause of action when applied to the collection of state property taxes was barred when there was an adequate remedy available under state law.

Hillcrest did not argue that "it had no adequate remedy under state law." (Petition Appendix pg. 22.) Hillcrest seeks relief by trying to replace the state's statue of limitations for a sale of tax-defaulted property with a statute of limitations that would save them from their own negligence.

Respectfully submitted,

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